

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

VOTORANTIM CIMENTOS LTDA,

Petitioner,

- against -

OXBOW CARBON AND MINERALS LLC,  
SUCCESSOR IN INTEREST BY MERGER TO  
APPLIED INDUSTRIAL MATERIALS  
CORPORATION,

Respondent.


08 CV 02232 (LBS)

**SUPPLEMENTAL DECLARATION OF  
DANIEL B. GOLDMAN IN SUPPORT  
OF REPLY BRIEF IN SUPPORT OF  
MOTION TO VACATE PARTIALLY  
AND CONFIRM PARTIALLY FINAL  
ARBITRATION AWARD**

DANIEL B. GOLDMAN, an attorney duly admitted to practice law in the Courts of the State of New York and the United States District Court for the Southern District of New York, under penalty of perjury, hereby declares:

1. I am a Partner at the law firm of Paul, Hastings, Janofsky & Walker LLP, counsel to Oxbow Carbon and Minerals LLC, Successor in Interest by Merger to Applied Industrial Materials Corporation ("Oxbow"), respondent in this action.
2. I submit this declaration in support of Oxbow's Reply Brief in Support of Motion to Vacate Partially and Confirm Partially the Final Arbitration Award.
3. Annexed as Exhibit A is a true and correct copy of excerpts from the Transcript of hearing dated April 16, 2007.

Dated: New York, New York  
July 18, 2008



Daniel B. Goldman (DG-4503)

**CERTIFICATE OF SERVICE**

I hereby certify that on July 18, 2008, the foregoing Supplemental Declaration of Daniel B. Goldman in Support of the Reply Brief in Support of Motion to Vacate Partially and Confirm Partially the Final Arbitration Award was filed electronically and served upon the following counsel of record by UPS overnight mail in accordance with the Federal Rules of Civil Procedure and the Southern District of New York Local Civil Rules. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

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# EXHIBIT A

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**7/16/07 - Applied Industrial and Votorantim Cimentos Arbitration - HEARING #4**

**Mel Winter & Associates, Inc.**

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CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY: MEL WINTER & ASSOCIATES, INC.

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7/16/07 - Applied Industrial Materials Corp. and Votorantim Cimentos Ltda. Arbitration  
Hearing #4

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1 Scott-Hansen - Cross (Chalos)  
2 answer.  
3 THE CHAIRMAN: That's your  
4 interpretation of the contract. I  
5 disagree with you what that says.  
6 MR. MAVRONICOLAS: What is his  
7 question?  
8 THE CHAIRMAN: You can make your  
9 argument in your brief.  
10 Now the question is -- you asked  
11 him, did you say something --  
12 MR. MAVRONICOLAS: Can I read the  
13 whole thing in? There is another part he  
14 quoted. The question goes on and it --  
15 he says -- "PREMCOR has a different  
16 interpretation, do they not?  
17 "I don't believe so. I think the  
18 understanding was that if Votorantim  
19 doesn't take this volume, then we will go  
20 out and help PREMCOR try to find an  
21 alternate buyer for that coke.  
22 "The difference between what it was  
23 sold for and what the contract called  
24 for, is what we summarized on the damages  
25 for nonperformance."

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1 Scott-Hansen - Cross (Chalos)  
2 THE CHAIRMAN: Back on the record.  
3 Q Now, you told this panel that your  
4 understanding of this contract, the AIMCOR-PREMCOR  
5 contract, was that if AIMCOR didn't take any tons,  
6 AIMCOR wasn't obligated to pay PREMCOR anything,  
7 right?  
8 A I believe I testified to this panel  
9 that we would have to pay to them the damages  
10 which they suffered by selling the coke elsewhere.  
11 THE CHAIRMAN: You're not answering  
12 the question.  
13 Read the question back. Listen  
14 carefully and answer the question.  
15 MR. MAVRONICOLAS: The question and  
16 answer.  
17 THE CHAIRMAN: I don't want the  
18 answer back. I want the question read  
19 back and I want a response to the  
20 question.  
21 (Record read)  
22 THE CHAIRMAN: Yes or no?  
23 MR. MAVRONICOLAS: If he can answer  
24 yes or no.  
25 THE WITNESS: I do not believe that

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1 Scott-Hansen - Cross (Chalos)  
2 That's what the full thing says.  
3 THE CHAIRMAN: So it's all in the  
4 record. Interpretation is another story.  
5 Now, you want to know if Matthew  
6 made a similar statement?  
7 MR. CHALOS: Correct.  
8 THE CHAIRMAN: In testimony?  
9 MR. CHALOS: He knows that's the  
10 situation, he testified to it.  
11 THE WITNESS: Based upon reading  
12 this transcript right now, it's difficult  
13 for me to understand what Mr. Nestler's  
14 position was.  
15 THE CHAIRMAN: He is not asking you  
16 that.  
17 THE WITNESS: I can't answer  
18 whether I testified to the same effect as  
19 is being written here.  
20 THE CHAIRMAN: What did you tell  
21 panel?  
22 MR. MAVRONICOLAS: He wants to ask  
23 him from the transcript.  
24 THE CHAIRMAN: Off the record.  
25 (Discussion off the record)

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1 Scott-Hansen - Cross (Chalos)  
2 is correct.  
3 MR. RING: Can I ask a simple  
4 question?  
5 Your understanding, what damages,  
6 if any, how would they be calculated if  
7 AIMCOR did not lift PREMCOR petcoke?  
8 MR. MAVRONICOLAS: Mr. Ring, I will  
9 not allow the witness to answer. It was  
10 a legal question.  
11 THE CHAIRMAN: He is entitled to  
12 ask him a question.  
13 THE WITNESS: It's my understanding  
14 that we would be held liable for the  
15 damages resulting from PREMCOR --  
16 resulting from that petcoke, which had  
17 been destined for Votorantim, being sold  
18 elsewhere and our company and PREMCOR  
19 together endeavored to find the best  
20 alternatives for those tons.  
21 In the end, the sales which were  
22 concluded for those tons, were not  
23 concluded by AIMCOR, but were concluded  
24 by PREMCOR because we worked in parallel  
25 to find alternative outlets and that the

85 (Pages 1220 to 1223)